



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 06249-99

3 April 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: CDE [REDACTED], USN [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 28 Sep 99 w/attachments  
(2) PERS-311 memo dtd 27 Jan 00  
(3) Subject's ltr dtd 15 Mar 00 w/enclosures  
(4) Memorandum for the Record dtd 30 Mar 00  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the original fitness report for 21 November 1997 to 31 October 1998, together with a letter transmitting a supplemental report for the same period, so that the supplemental report will be the only report in the record for this period. Copies of the original report, the letter of transmittal and the supplemental report are at Tabs A, B and C respectively. Petitioner also impliedly requested removing any failures to be screened for commander command with the contested original fitness report in his record.

2. The Board, consisting of Messrs. Goldsmith and Zsalman and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 30 March 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. During the reporting period in question, Petitioner served in the grade of lieutenant commander, performing the duty of executive officer aboard the USS SIDES. This is the

only period for which he received a fitness report from the commanding officer (CO)/reporting senior concerned. In the contested original fitness report (Tab A), submitted on 20 October 1998, his promotion recommendation was "Early Promote," the highest possible (he was compared with no other officer). His other marks were "5.0," the highest, except in three areas: "3.0," third best, in block 34 ("Equal Opportunity"); and "4.0," second best, in blocks 33 ("Professional Expertise") and 39 ("Tactical Performance"). He did not exercise his right to submit a statement concerning this report. The supplemental report (Tab C), submitted on 24 August 1999, also marked him by himself as "Early Promote," but raised to "5.0" all three marks which had been below that level. Both the original and revised block 41 narratives were entirely favorable, and both recommended Petitioner for command. However, the narrative of the revised report was somewhat more effusive in its praise of Petitioner's performance; it employed capitalization to emphasize the recommendation that he be screened for command; and it placed this recommendation at both the beginning and end, rather than just at the beginning. The transmittal letter (Tab C) forwarding the revised report gave as the reason for submission "Supplemental report submitted to more accurately reflect subject officers [sic] performance during reporting period taking into account recent changes to BUPERSINST [Bureau of Naval Personnel Instruction] 1610.10."

d. Petitioner contends that the reporting senior wrote the original report in the belief that he was restricted in writing style and grading; that the reporting senior later rewrote the report, submitting it as a supplemental report to more accurately reflect Petitioner's performance; and that the reporting senior did make an error in submitting the first report, which had caused Petitioner a great injustice. Petitioner says he feels certain he has been unduly disadvantaged at his recent administrative selection boards.

e. In the advisory opinion at enclosure (2), PERS-311, the Navy Personnel Command office having cognizance over officer fitness reports, has commented to the effect that Petitioner does not prove the contested original report to be unjust or in error, and they recommended that the record remain unchanged. They stated the fact the revision is a better report should have no bearing on whether the original is retained or removed; that reporting seniors are provided the facility to add material to fitness reports already on file, not replace them; that substitution of the revised report for the original should be approved only in unusual circumstances; that nothing provided in the petition or in the reporting senior's letter forwarding the revised report demonstrates that retention of the original report would constitute an error or injustice; that the original and revised reports are filed together with the letter of transmittal; and that they provide a complete picture of Petitioner's performance as first evaluated, and then after the reporting senior had the opportunity to reconsider.

f. At enclosure (3) is Petitioner's letter in response to the PERS-311 advisory opinion, with which he strongly disagreed. He insisted that the reporting senior did make an error in submitting his first report, and that this has caused Petitioner a great injustice. He maintained that the reporting senior did not do this intentionally, nor did Petitioner himself immediately realize the ramifications of the reporting senior's error, but that "due to changes to the Fitrep [fitness report] system occurring simultaneous to the development of the report in question,

we [Petitioner and the reporting senior] both realized the error after the fact." He stated that his reporting senior attended the prospective commanding officer (PCO) school pipeline at the end of 1996, but that during the latter half of 1997 and throughout 1998, a new grading philosophy was put out to PCO's, to the effect that executive officers, whose fitness reports do not compare them with other officers, "should be graded 5.0 across the board unless the CO is intending to send a negative signal...anything less may be viewed as a hidden signal that there could be a problem with the officer." He asserted that CO's who, like his own reporting senior, had assumed command before this change were not informed of it, creating an unfair disparity in fitness report grading among executive officers, depending on when their CO arrived in command.

g. With his letter at enclosure (3), Petitioner provided a letter dated 12 July 1999 from his reporting senior to the president of Petitioner's then upcoming commander command screening board, excerpts from the March/April 1999 issues of Surface Warfare Magazine and Perspective, Petitioner's citation for the Meritorious Service Medal for his service aboard the USS SIDES from February 1998 to July 1999, and a message showing the USS SIDES had received the 1999 Battle Efficiency and Command Excellence Award. The reporting senior's letter to the screening board explained his marking of the contested original fitness report and submission of the revised report as follows:

3...As a PCO starting the pipeline at the end of 1996, specific instruction was put out on how the "new fitrep system" was supposed to work, i.e. no 5.0 officers, rejection by BUPERS of inflated fitreps, etc. The 3.0 in block 34, Equal Opportunity, was not meant to cause any negative reflection on [Petitioner's] performance. I had a policy throughout my command of giving every individual a 3.0 in Equal Opportunity as a means of controlling the average. This policy was applied to all fitreps I signed including my previous XO [executive officer] and my Command Master Chief. The performance marks and overall average I gave [Petitioner] was the BEST fitness report I signed out as Commanding Officer.

4...I never intended to send the selection board a signal of any type of shortcoming in his performance. Any failure to convey his superior performance in his fitrep is my error. THIS OUTSTANDING OFFICER SHOULD BE IN COMMAND! I have since submitted a supplemental report which more accurately reflects his performance using recent changes to BUPERS [sic] 1610.10 which relaxed restrictions on writing style and grading.

The excerpt from Surface Warfare Magazine stated "Believe it or not, there are still reporting seniors out there who may give their XO a 3.0 mark to 'keep their average down' and then not explain it in the text." The excerpt from Perspective admonishes reporting seniors to "Make the FITREP shine if your XO has your support for Command at Sea."

h. The memorandum for the record at enclosure (4) shows that Petitioner has been considered and not selected for commander command screening four times, by screening

boards convened on 9 December 1996, 27 January 1998, 25 January 1999 and 31 January 2000; and that he is routinely entitled to only four considerations, although he may apply for a fifth ("special look").

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds the existence of an injustice warranting the requested correction of Petitioner's fitness report record and removal of his third and fourth failures to be screened for commander command.


In finding that the contested original fitness report should be removed, the Board particularly notes the reporting senior's letter to Petitioner's screening board, at enclosure (3), which PERS-311 did not have an opportunity to consider in preparing their advisory opinion. They do recognize that neither Petitioner nor the reporting senior cites any specific authority for the proposition that BUPERSINST 1610.10 has been changed to relax restrictions on writing style and grading of fitness reports. However, they find that the grading policies the reporting senior admits to having applied in completing the contested original report, especially assigning everyone a "3.0" in "Equal Opportunity," were arbitrary and unjustifiable. They consider it to have been patently unfair that the reporting senior deliberately gave Petitioner marks lower than he deserved, merely to keep the reporting senior's marking average down. The Board also notes that the revised report was submitted in a timely manner, only 10 months after the original.

The Board finds that the low marks assigned in the contested original report would have harmed Petitioner's chances to be screened for commander command. The memorandum for the record at enclosure (4) shows the report was in the record for Petitioner's third and fourth failures to be screened, so the Board finds these failures should be removed, giving him at least two more chances. Although Petitioner's fourth board also had the revised report, the reporting senior's transmittal letter forwarding that report, and his letter to the board's president, this Board is not satisfied that this material would have counteracted fully the detrimental effect of the original report.

In view of the above, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following original fitness report and related material, including the transmittal letter dated 12 July 1999, leaving in the record the supplemental report covering the same period:

Date of Report	Reporting Senior	Period From	of Report To
98Oct20	 USN	97Nov21	98Oct31

b. That Petitioner's failures to be selected by the January 1999 and 2000 commander command screening boards, his third and fourth looks, be removed, so that he will have at least two more chances to be screened.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

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*W. Dean Pfeiffer*  
W. DEAN PFEIFFER

Reviewed and approved:

MAY 25 2000

*C. L. Tompkins*

CHARLES L. TOMPKINS  
Deputy Assistant Secretary of the Navy  
(Personnel Programs)



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NAVY PERSONNEL COMMAND  
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6249-99

1610  
PERS-311  
27 January 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness report for the period 21 November 1997 to 31 October 1998 and replace it with a supplemental fitness report for the same period.

2. Based on our review of the material provided, we find the following:

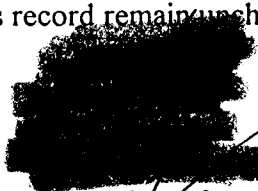
a. A review of the member's headquarters record revealed the original and supplemental fitness report to be on file. They are signed by the member acknowledging the contents of each report and his right to submit a statement. The member did not desire to submit a statement.

b. The reporting senior submitted the supplemental fitness report with the required cover letter in accordance with reference (a), Annex P. The supplemental report upgrades several performance trait marks and revises block-41, Comments on Performance. The member's promotion recommendation is the same on both reports.

c. The reporting senior has submitted, and we have accepted and filed the revised report. The fact that the revision is a better report should have no bearing on whether the original is retained or removed. We provided reporting seniors with the facility to add material to fitness reports already on file, not replace them. Substitution of the revised report for the original should only be approved in unusual circumstances. Nothing provided in the member's petition or in the forwarding letter demonstrates that retention of the original report would constitute an error or injustice. The original and revised reports are filed together with the letter of transmittal. They provide a complete picture of Command [REDACTED] performance as first evaluated, and then after the reporting senior had the opportunity to reconsider.

d. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.



Head/Performance  
Evaluation Branch

30 March 2000

## MEMORANDUM FOR THE RECORD

Re: [REDACTED]

PERS-410 [REDACTED] advise [REDACTED] has been considered and not selected for commander command screening four times, by screening boards convened on 9 Dec 96, 27 Jan 98, 25 Jan 99 and 31 Jan 00; and that he is routinely entitled to only four considerations, although he may apply for a fifth ("special look").

[REDACTED]  
JONATHAN S. RUSKIN  
Head, Performance Section